

§ 401.91

an appeal must be filed with an appropriate federal court, as provided in Article 15.1(p) of the Commission's Compact, within forty-five (45) days of final Commission action.

Subpart G—Penalties and Settlements in Lieu of Penalties

SOURCE: 52 FR 37602, Oct. 8, 1987, unless otherwise noted.

§ 401.91 Scope of subpart.

This subpart shall be applicable where the Commission shall have information indicating that a person has violated or attempted to violate any provision of the Commission's Compact or any of its rules, regulations or orders (hereafter referred to as possible violator). For the purposes of this subpart, person shall include person, partnership, corporation, business association, governmental agency or authority.

§ 401.92 Notice to possible violators.

Upon direction of the Commission the Executive Director shall, and in all other instances, the Executive Director may require a possible violator to show cause before the Commission why a penalty should not be assessed in accordance with the provisions of these rules and section 14.17 of the Compact. The notice to the possible violator shall:

(a) Set forth the date on which the possible violator shall respond; and

(b) Set forth any information to be submitted or produced by the possible violator.

§ 401.93 The record for decision-making.

(a) *Written submission.* In addition to the information required by the Commission, any possible violator shall be entitled to submit in writing any other information that it desires to make available to the Commission before it shall act. The Executive Director may require documents to be certified or otherwise authenticated and statements to be verified. The Commission may also receive written submissions from any other persons as to whether a violation has occurred and the adverse consequences resulting from a viola-

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tion of the Commission's Compact or its rules, regulations and orders.

(b) *Presentation to the Commission.* At the date set in the Notice, the possible violator shall have the opportunity to supplement its written presentation before the Commission by any oral statement it wishes to present and shall be prepared to respond to any questions from the Commission or its staff or to the statements submitted by persons affected by the possible violation.

§ 401.94 Adjudicatory hearings.

(a) An adjudicatory hearing, which may be in lieu of or in addition to proceedings pursuant to § 401.93 at which testimony may be presented and documents received shall not be scheduled unless:

(1) The Executive Director determines that a hearing is required to have an adequate record for the Commission; or

(2) The Commission directs that such a hearing be held.

(b) If an adjudicatory hearing is scheduled, the possible violator shall be given at least 14 days written notice of the hearing date unless waived by consent. Notice of such a hearing may be given to the general public and the press in the manner provided in section 14.4(b) of the Compact but may be waived by the Executive Director.

(c) Except to the extent inconsistent with the provisions of this subpart adjudicatory hearings shall be conducted in accordance with the provisions of §§ 491.83 through 401.88 (including § 401.86 *et seq.*).

§ 401.95 Assessment of a penalty.

The Executive Director may recommend to the Commission the amount of the penalty to be imposed. Such a recommendation shall be in writing and shall set forth the basis for the penalty amount proposed. Based upon the record submitted to the Commission, the Commission shall decide whether a violation has occurred that justifies the imposition of a penalty pursuant to § 14.17 of the Compact. If it is found that such a violation has occurred, the Commission shall determine the amount of the penalty to be paid.